

Town of Harpswell
Basic Land Use Ordinance

Adopted February 3, 1994
Amended March 15, 1997
Amended March 6, 1999
Amended March 11, 2000
Amended August 23, 2001
Amended March 16, 2002
Amended November 23, 2002
Amended March 8, 2003
Amended May 20, 2004
Amended March 13, 2005
Amended March 11, 2006
Amended March 10, 2007
Amended March 14, 2009

Replaces Land Use Ordinance adopted February 3, 1994

SECTION 1. PURPOSE

The purpose of this Ordinance is to provide for reasonable and orderly development within all areas of the Town while protecting the health, safety, and welfare of its citizens.

This Ordinance seeks to preserve the character of Harpswell as a residential, fishing, and vacation community with clean waters, healthy wetland functions and wildlife habitats, scenic attractiveness and a sense of openness. It seeks also to preserve to the maximum extent possible, traditional rights of landowners to use their lands as they desire, while at the same time protecting nearby residential owners from excessive conflicting uses that might degrade property values and damage the attractiveness of the community to the detriment of all.

SECTION 2. AUTHORITY

This Ordinance is adopted under powers granted to the town by 30-A M.R.S.A. §§ 3001 and 4352, as may be amended from time to time.

Throughout this Ordinance there are "Citizen's Notes". These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered as aids for citizens to use this Ordinance and as guides to the intent of Ordinance provisions and their proper interpretation.

Section Titles of this Ordinance do not constitute official ordinance language. These Titles shall only be considered as an aid for citizens using this Ordinance.

SECTION 3. APPLICABILITY

This Ordinance applies to all dwellings, accessory structures, and uses that are not subject to Shoreland Zoning. The provisions of this Ordinance pertaining to non-conformance apply to all non-conforming, non-residential structures, developments, and uses not subject to the Shoreland Zoning Ordinance. In addition, the procedural and administrative provisions contained in this Ordinance govern the administration of all the Town's land use ordinances. Insofar as this Ordinance is inconsistent with state law as it relates to mobile home parks, the provisions of 30-A M.R.S.A. § 4358, as may be amended from time to time, shall prevail.

Citizen's Note: For creation of subdivisions, see Subdivision Ordinance. For activities in the Shoreland Zone requiring permits, see Shoreland Zoning Ordinance. Multi-family dwellings and non-residential development, wherever located, are also subject to the provisions of the Site Plan Review Ordinance.

SECTION 4. EFFECTIVE DATE

The effective date of this Ordinance is September 15, 1997.

SECTION 5. AVAILABILITY

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

SECTION 6. SEVERABILITY

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

SECTION 7. CONFLICTS WITH OTHER ORDINANCES

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Ordinance, regulation or statute, the more restrictive provision shall control unless state law provides otherwise.

SECTION 8. AMENDMENTS

Amendments may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

Amendments may be initiated by a majority vote of the Planning Board, by a majority vote of the Board of Selectmen or by written petition signed by a number of registered voters equal to 10% of Harpswell voters voting in the last gubernatorial election.

SECTION 9. LAND USE REQUIREMENTS

Except as hereinafter specified, no structure or land shall hereafter be used or occupied, and no structure or part thereof shall hereafter be erected, constructed, expanded, moved, altered, replaced and no new lot shall be created except in conformity with all of the regulations herein specified for the area or district in which it is located, unless a variance is granted by the Board of Appeals.

SECTION 10. NON-CONFORMANCE

10.1. Purpose. It is the intent of this Ordinance to promote land use conformities, except that lawful non-conforming conditions that existed before September 15, 1997 and the effective dates of any amendments to this Ordinance creating new non-conforming conditions shall be allowed to continue, subject to the requirements set forth in this section

Citizen's Note: Non-conformance should not be considered illegal or unacceptable. Non-conformance means lots of record or uses that are grandfathered because they were in conformance with the standards in effect before the adoption of this Ordinance or any amendments creating new non-conforming conditions. The concerned party is encouraged to read through this Ordinance and contact a town official should a question arise. If the property is located in the Shoreland Zone, see the relevant provisions in the Shoreland Zoning Ordinance.

10.2. General.

10.2.1. Transfer of Ownership: Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

10.2.2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repair or renovations which do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as Federal, State, or local building and safety codes may require.

Citizen's Note: See Definitions Addendum for the definitions of non-conforming structures, non-conforming uses, and non-conforming lots.

10.3. Non-Conforming Structures

10.3.1. Expansions - A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure. For the purposes of this Ordinance, an increase to the non-conformity of the structure shall mean:

- any expansion towards a property line or road that decreases the shortest existing non-conforming setback distance from property line or road, or
- any expansion which would cause the total area covered by the structures, driveways, parking lots, and other non-vegetated areas to exceed 20% of the total lot area, or
- any expansion which would cause the structure to exceed the height limits of this Ordinance.

The shortest existing non-conforming setback distance from a property line or a road may not be measured from an existing area, such as a small patio, terrace, landing, or small set of stairs, used mainly for access to a structure.

Citizen's Note: It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent structure and cannot be used to justify expansion of any other part of the structure into that setback.

10.3.1.1. After September 15, 1997, or the effective date of any amendment to this Ordinance creating any new non-conforming conditions, if any portion of an existing structure is less than the required setback from the road or property line, that portion of the structure shall not be expanded in floor area or volume, by more than 30%, during the lifetime of the structure.

10.3.1.2. Construction of a foundation beneath an existing building that is non-conforming as to setbacks shall not be considered an expansion of the structure provided that:

10.3.1.2.1. The foundation shall not extend beyond the exterior dimension of the building as it existed on September 15, 1997 or the effective date of any amendment to this Ordinance creating any new non-conforming condition, or as expanded in accordance with Section 10.3.1.1.

Citizen's Note: Disputed decisions may be appealed to the Board of Appeals.

10.3.2. Relocation, Reconstruction, or Replacement

10.3.2.1. Relocation: A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Code Enforcement Officer, and provided that the applicant demonstrates that the present sub-surface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. Any relocation approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer.

10.3.2.2. Reconstruction or Replacement: Any non-conforming structure that is located less than the required setback from a property line or road and which is removed, damaged, or destroyed by more than 50% of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Code Enforcement Officer, may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and provided such replacement is in compliance with the setback requirements to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Ordinance; provided, however, that any non-conforming structure that is located less than the required setback from a property line or road and that is damaged or destroyed by fire or any cause other than the willful act or negligence of the owner or the owners agent may be reconstructed on the same footprint as the structure that was destroyed. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. Any reconstruction or replacement approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer.

10.3.2.3 Authority of Planning Board to Exercise Jurisdiction over an Application.

For any application for relocation, reconstruction or replacement made under Section 10.3, the Code Enforcement Officer shall provide written notice to the Planning Board and all property owners within two hundred and fifty (250) feet of the property as listed on the Town's most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board's review, if any, shall be governed by the same review standards as govern the Code Enforcement Officer's review. The Code Enforcement Officer shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the Code Enforcement Officer provides such written notice to the Planning Board and all property owners within two hundred and fifty (250) feet of the property as listed on the Town's most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the Code Enforcement Officer or Planning Board.

10.3.2.4. Greatest Practical Extent Setback Factors. In determining whether the building relocation, reconstruction or replacement meets the setback to the greatest practical extent, the Code Enforcement Officer or Planning Board, as applicable, shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic systems and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

10.4. Non-Conforming Lots

10.4.1. Non-conforming lots whether located in legal subdivisions or elsewhere are subject to the provision of this section.

10.4.2. Non-Conforming Lots: A non-conforming lot of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating any new non-conforming conditions may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage are met; provided, further, that reduced setback requirements may be applicable to those lots that meet the criteria set forth in Section 10.4.2.1. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.

The status of a non-conforming lot of record shall not change as a result of realigning a common boundary line with the owner of a contiguous parcel of land, provided that (a) neither lot ends up more non-conforming after the transaction than it was prior to the transaction, as evidenced in writing by a land surveyor licensed to practice in Maine; (b) the parties cause copies of the recorded deeds to be submitted to the CEO within 30 days of the recording of the

deeds at the registry; and (c) no permits or approvals relating to such non-conforming lot shall be issued unless or until the applicant complies with subsections (a) and (b) herein.

10.4.2.1. Setback Reduction for Small Non-Conforming Lots. The setback of structures from lot lines may be reduced to five (5) feet and the setback of structures from traveled ways may be reduced to ten (10) feet in order to allow the expansion or construction of a structure to be used solely for single family residential purposes or an accessory structure appurtenant to it, provided that the following conditions are met:

- (a) The non-conforming lot in question was lawfully created prior to September 15, 1997 and is evidenced by a recorded deed or subdivision plan;
- (b) The lot meets the following size requirements:
 - (i) less than one-quarter ($\frac{1}{4}$) acre (i.e., less than 10,890 square feet) in size; and
 - (ii) if, as determined by the Code Enforcement Office, less than one-half of the eligible owner(s) of lots under Section 10.4.2.1(b)(i) do not apply for the reduced setback described herein within two years of the adoption of this subsection, then owner(s) of lots less than ($\frac{1}{2}$) acre (i.e. less than 21,780 square feet) in size may apply for the reduced setback established herein; provided, however, that no more than fifty percent (50%) of the total number of eligible lots will be permitted the reduced setbacks described herein;
- (c) The lot is not located in whole or in part within the Shoreland Zone;
- (d) There exist two or more other non-conforming lots meeting the size requirement then applying under Section 10.4.2.1(b) that have been improved with single family residences within a five hundred (500) foot radius of the lot in question;
- (e) Neither Section 10.4.3 nor Section 10.4.4 apply to the lot; and
- (f) The owner or owners of the property located along the boundary line adjacent to which the setback reduction is requested consents in writing to the reduction; and
- (g) That any new structure constructed pursuant to this Section is consistent with the character of the local area in which it is to be situated, as determined by the Planning Board.

If a reduced setback is approved pursuant to this Section on previously unimproved lots, the lot coverage requirements set forth in Section 11.1.1 shall continue to apply.

If a reduced setback is approved pursuant to this Section on lots that have been previously improved with a structure, that structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure, and lot coverage requirement set forth in Section 11.1.1 shall not apply.

10.4.3. Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating any new non-conforming conditions if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating new non-conforming conditions, each may be sold as a separate lot, provided that State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

10.4.4. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since September 15, 1997 or the effective date of any amendment to this Ordinance creating new non-conforming conditions, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons as of September 15, 1997 or the effective date of any amendment to this Ordinance creating new non-conforming conditions and recorded in the Registry of Deeds, if the lot is served by the public sewer, or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Rules and:

10.4.4.1. Each lot contains at least 100 feet of road frontage and at least 20,000 square feet of lot area; or

10.4.4.2. Any lots that do not meet the frontage and lot size requirements of subparagraph 10.4.3. Are reconfigured or combined so that each new lot contains at least 100 feet of road frontage and 20,000 square feet of lot area.

10.4.5. Creation of Non-Conforming Lot(s) for Preservation or Conservation Purposes

An existing conforming lot or a non-conforming lot may be divided so as to create not more than two lots, one or both of which are non-conforming lots, provided that the Harpswell Planning Board finds that the following conditions are met:

10.4.5.1. One of the resulting lots is conveyed to a governmental body or a nonprofit tax exempt organization (preservation grantee) for conservation or preservation purposes.

10.4.5.2. The division does not create or exacerbate a public health or safety problem on the non-conforming lot not to be conveyed to a preservation grantee (the remaining lot) to the extent that the remaining lot does not have adequate (as defined by the applicable code) well and septic waste disposal options.

10.4.5.3. If the lot conveyed to the preservation grantee is undeveloped land, or is to be returned to an undeveloped state, the deed or instrument of conveyance shall contain restrictions which require that the land be preserved or maintained in its natural state

(although not necessarily "forever wild") in perpetuity for one or more generally recognized purposes which benefit the natural, cultural, or architectural history of the Town or which preserves a diminishing or threatened place, parcel of land, resource, or habitat.

10.4.5.4. If the lot conveyed to the preservation grantee contains a pre-existing structure or improvement, the structure or improvement must have a demonstrable historic, cultural or architectural importance and the deed or instrument of conveyance shall contain restrictions which require that the land and the improvements thereon be preserved and maintained so as to protect and preserve said historic, cultural or architectural importance. No structure on the lot conveyed to a preservation grantee pursuant to this section may be inhabited as a dwelling.

SECTION 11. STANDARDS

11.1. Minimum Lot Standards

SHORELAND ZONE¹

	SHORELAND NON-TIDAL	SHORELAND TIDAL	SHORELAND OFFSHORE ISLANDS	NON-SHORELAND AREA OF OFFSHORE ISLANDS	SUBDIVISIONS
MIN. LOT SIZE (S.F.) PER DWELLING UNIT	40,000	40,000	40,000	40,000	80,000 ⁴
SHORE FRONTAGE (FT)	200	150	150	exempt	150
WATERBODY, TRIBUTARY STREAM, OR WETLAND SETBACK (FT)	75	75	75	n/a	75
PROPERTY LINE SETBACK (FT)	25	25	25	20	25
ROAD SETBACK (FT)	n/a	n/a	n/a	exempt	40
STRUCTURE HEIGHT (FT)	30	30	30	30	30

OTHER AREAS OF TOWN²

	AREAS LOCATED OUTSIDE OF A SUBDIVISION	AREAS LOCATED WITHIN A SUBDIVISION
MIN. LOT SIZE (S.F.) PER DWELLING UNIT	40,000	80,000 ⁴
ROAD FRONTAGE (FT)	150 ³	150 ⁵
PROPERTY LINE SETBACK (FT)	See Section 11.3.1	See Section 11.3.1
ROAD SETBACK (FT)	See Section 11.3.1	See Section 11.3.1
STRUCTURE HEIGHT (FT)	30	30

1. For non-residential uses in the Shoreland Zone, see Section 15.1 of the Shoreland Zoning Ordinance and the Site Plan Review Ordinance.
2. Non-residential development in these areas is governed by the Site Plan Review Ordinance.
3. For any road serving more than two lots or dwelling units, the road must comply with the requirements of the Town of Harpswell Road Ordinance. For any lot to which access is only by one or more roads terminating at the lot, no minimum road frontage is required provided that access to any development on the lot is wide enough to accommodate emergency vehicles but in no event less than 12 feet in width.
4. Alternative lot sizes are allowed under the Subdivision Ordinance.
5. The frontage requirement for lots on a hammerhead or T-shaped turnaround for dead end roads in a subdivision may be reduced to fifty (50) feet where no future road is either feasible or provided for on the subdivision plan, provided that all of the requirements of the Town of Harpswell Road Ordinance are met.

11.1.1. The total area covered by all structures, driveways, parking lots, and other impermeable areas shall not exceed twenty percent (20%) of the area of the lot.

11.1.2. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

11.1.3. Land below the maximum high water line of a water body, tributary stream, or upland edge of a wetland and land which is part of a road, or a transportation right-of-way, or easement serving more than two lots, except rights-of-way or easements used exclusively for pedestrian access, shall not be included when calculating minimum lot area.

11.2. Minimum Lot Frontage

11.2.1. Off-Shore Island: lots on off-shore islands not covered by Shoreland Zoning will be exempt from Frontage requirements.

11.3. Principal and Accessory Structures

11.3.1. Setback: All principal structures and expansions of existing principal structures shall be set back at least forty (40) feet from the edge of the traveled way and at least twenty (20) feet from all lot lines; provided, however, that if more than one traveled way abuts a lot, the dwelling need only be set back from the traveled way that serves as access to the driveway for the lot. All accessory structures shall be set back at least twenty (20) feet from all lot lines or the edge of a traveled way, whichever is more restrictive. If the location of a property line along a traveled way is unknown, the setback for accessory structures shall be forty (40) feet from the edge of the traveled way.

11.3.1.1. One accessory structure not to exceed eighty (80) square feet and not to exceed ten feet six inches (10'6") in height may intrude up to ten (10) feet into a sideline or rear setback without the need for a variance if the Codes Enforcement Officer determines that the proposed location meets the setback requirements to the greatest practical extent as described in Section 10.3.2.4, has been consented to in writing by the property owner(s) abutting the lot line in question, and will meet all other requirements of the ordinance.

11.3.2. Height of Structures. All principal and accessory structures shall not exceed thirty (30) feet in height. All expansions of principal and accessory structures that increase the footprint of the structure shall not exceed thirty (30) feet in height. For any principal or accessory structure existing as of March 10, 2007 that lawfully exceeds thirty (30) feet in height, such structure may be expanded without the need for a variance provided that (a) the expansion does not increase the footprint of the structure; and (b) the expansion does not exceed the greatest height of the existing structure. Expansions of non-conforming structures must comply with all other expansion limitations of this Ordinance. The Code Enforcement Officer shall review any proposed expansion of a structure and shall determine, in writing, whether the requirements of this subsection are met prior to the issuance of any permit. This subsection does not apply to structures having no floor area, such as transmission towers, windmills, antennas and similar structures.

The height of a structure shall be determined by using the vertical distance, as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area. Notwithstanding the preceding sentence, cupolas or similar portions of a structure having no floor area and exceeding any of the following dimensions (a) a side wall of 16 square feet; (b) a side wall of four feet in height; (c) 16 square feet of horizontal area; or (d) a 12/12 roof pitch, shall be included in the measurement of the height of a structure.

If the measurement cannot be made from the original grade where the structure is to be located, the Code Enforcement Officer shall establish a reasonable approximation of original grade for the purposes of determining height.

11.4. Subsurface Waste Disposal

11.4.1. All subsurface wastewater disposal systems shall be permitted and installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and to minimize adverse impacts on ground water quality.

11.4.2. All new, replacement, renovated, or expanded structures or uses generating waste, shall provide evidence of the type specified in Section 13.3.4 that an adequate wastewater disposal system can be constructed or that an adequate wastewater disposal system already exists.

11.4.3. Existing Use - Continuation of Use: The use of any legal system that exists on the effective date of this Ordinance, or which had previously been approved for installation, may be continued without change except as may be specifically covered by the Maine State Plumbing Code or deemed necessary by the plumbing inspector, for the general safety and welfare of the occupants and the public.

11.4.4. Change in Use - It shall be unlawful to make any change in the use of any system, or to erect, enlarge, or change the use of a structure that uses an existing system without the approval of the plumbing inspector and certification that such change does not result in any hazard to public health, safety, and welfare.

11.4.5. The minimum setback for new subsurface wastewater disposal fields shall be not less than one hundred (100) horizontal feet from the maximum high water line of a perennial water body. The minimum setback distance from the water body for new subsurface wastewater disposal fields shall not be reduced by variance.

11.4.6. Replacement systems shall meet the standards for replacement systems as contained in the Maine Subsurface Wastewater Disposal Rules.

11.4.7. The owner of the proposed system may locate the system or components partially on property not owned or controlled by the owner of the system, provided that the owner of the property where the system is to be located executes an easement in perpetuity for the construction, operation, replacement, and maintenance of the system, giving the system's owner authorization to cross any land or right-of-way between the two parcels. The easement shall be filed and cross-referenced in the Registry of Deeds and the Codes Enforcement Office prior to issuance of a disposal system permit. The easement shall provide sufficient buffer around the disposal field and fill material extensions for future replacement and maintenance of the system.

Citizens Note: *The Town recommends that all owners of new and replacement systems install low-flow flushes and shower heads.*

11.5. Roads and Driveways. Roads serving more than two lots or dwelling units must comply with the requirements of the Town of Harpswell Road Ordinance.

***Citizen's Note:** Roads in the Shoreland Zone are also governed by the Shoreland Zoning Ordinance. Any owners of lots fronting on State Route 123, State Route 24, the Cundy's Harbor Road, or the Mountain Road are encouraged to share driveways to reduce curb cuts and improve safety. A curb cut must be approved by Maine DOT and the Town Road Commissioner.*

11.6. Storm Water Runoff

11.6.1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

11.6.2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

11.7. Campgrounds. Campgrounds shall be subject to the same provisions as those set forth in Section 15.4 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.8. Individual Private Campsites and Temporary Residential Use. Individual private campsites and temporary residential uses shall be subject to the same provisions as those set forth in Section 15.5 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.9. Agriculture. Agriculture shall be subject to the same provisions as those set forth in Section 15.13 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.10. Earth Moving, Erosion and Sedimentation Control. Earth moving, erosion and sedimentation control shall be subject to the same provisions as those set forth in Section 15.16 of the Shoreland Zoning Ordinance, as may be amended from time to time.

11.11. Water Quality Protection. No activity shall deposit on or into the ground or discharge to the water of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of a water body.

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances.

11.12. Accessory Residential Units. An accessory residential unit may be added to any dwelling unit provided that (a) the property is owner-occupied; (b) that Harpswell is the principal residence of the occupant(s) of the accessory residential unit; (c) a building permit is obtained; (d) all of the requirements of this Ordinance, with the exception of shore frontage, road frontage, and minimum lot size, are met; (e) all requirements of the Maine Subsurface Wastewater

Disposal Rules in accordance with 22 M.R.S.A. § 42, as may be amended from time to time, are met; and (f) all requirements of the Maine State Minimum Lot Size Rules 12 M.R.S.A. § 4807, as may be amended from time to time, are met. The Code Enforcement Officer shall have the right to inspect all accessory residential units to ensure compliance with this section.

11.13. Utilities and Essential Services. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors and above ground facilities must be located so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

11.14. Soils. All land uses shall be located on soils in or upon which proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based in an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, and Maine State Certified Geologists. The report shall include an analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

11.15. Timber Harvesting and Vegetative Buffers. Within seventy-five (75) feet, horizontal distance, from the maximum high water line of a tributary stream, harvesting of timber or clearing of existing vegetation in areas other than the Shoreland Zone, shall be conducted in accordance with the following provisions.

11.15.1. There shall be no clearcut openings greater than two hundred fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained.

11.15.2. No accumulation of slash shall be left within fifty (50) feet of the maximum high water line of a tributary stream. Slash shall either be removed or disposed of in such a manner that it lies on the ground and no part of it extends more than four (4) feet above the ground. Any debris that falls below the maximum high water line of a tributary stream shall be removed.

11.15.3. Timber harvesting equipment shall not use a water body, tributary stream, or wetland as a travel route except when:

11.15.3.1. Surface waters are frozen; and

11.15.3.2. The activity will not result in any ground disturbance.

11.15.4. All crossing of flowing water shall require a bridge or culvert except in areas with low banks and channel beds which are composed of gravel, rock, or similar hard surface which would not be eroded or otherwise damaged.

11.15.5. Skid trail approaches to a water crossing shall be located and designed so as to prevent water runoff from directly entering the tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed.

11.15.6. Except for water crossings, and skid trails, the operation of machinery used in timber harvesting may not result in the exposure of mineral soil.

11.15.7. Cleared openings legally in existence as of March 10, 2001 may be maintained, but shall not be enlarged, except as permitted by this Ordinance.

11.15.8. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

11.16 Home Occupations. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance setting forth performance standards for home occupations regardless of whether they are located within the Shoreland Zone.

11.17 Archeological and Historic Sites. All proposed land use activities shall be designed to protect archeological and historic sites that have been identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service. Any proposed land use activity involving structural development or soil disturbance on sites listed on the National Register of Historic Places shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) business days prior to action being taken by the applicable Town permitting authority; provided, however, that the Code Enforcement Officer may, in the event of an emergency as determined by the Code Enforcement Officer, take appropriate action to allow only such limited land use activity as is necessary to protect the public health, safety and welfare in order to cure the emergency situation. The Town permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

SECTION 12. ADMINISTRATION

12.1. Administrative Bodies and Agents

12.1.1. Code Enforcement Officer A Code Enforcement Officer shall be appointed or re-appointed annually by March 31.

12.1.2. Powers and Duties. The Codes Enforcement Officer shall enforce the provisions of the Town's land use ordinances and monitor all activities within the jurisdiction of the Town's land use ordinances. The Code Enforcement Officer shall follow up all building permits to ascertain compliance with any conditions or restrictions imposed on the permittee by the Codes Enforcement Officer, Planning Board, Board of Appeals, or the Town's land use ordinances.

The Codes Enforcement Officer shall also investigate all complaints of alleged violations of the Town's land use ordinances. He or she shall enforce the Town's land use ordinances, as defined in his or her job description, for which purpose he or she shall establish reasonable procedures.

The Codes Enforcement Officer shall have all of the duties, responsibilities, and powers set forth in the State statute or local ordinance, including but not limited to the power to issue "stop work" orders, notices of violation of the Town's land use ordinances, and orders to cease violations. He or she shall also have the authority to revoke building permits as a result of violations of the Town's land use ordinances by the permit holder or his or her agents or contractors, noncompliance with conditions of building permits, or other sufficient cause under the Town's land use ordinances.

12.1.3. The Codes Enforcement Officer shall keep a complete written record of all essential transactions of his or her office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. Such records shall be available for inspection by the public.

On a biennial basis, a summary of this record for the shoreland districts shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

12.1.4. The Codes Enforcement Officer shall maintain a list of permits granted by his or her office, the Board of Appeals and the Planning Board. Permits will remain on the list as long as they are active.

12.1.5. The Codes Enforcement Officer shall report to the Board of Selectmen any changes that may be needed in the Town's land use ordinances and prepare a file for review by the Selectmen and appropriate town boards and committees for future action.

12.2. Planning Board. A Planning Board is created in accordance with the provisions of State law.

12.2.1. Appointment.

12.2.1.1. Appointment to the Board shall be made by the Selectmen as terms expire and/or as vacancies occur. Terms shall be for three years.

12.2.1.2. The Board shall consist of five (5) members and two (2) associate members.

12.2.1.3. Associate members shall be appointed annually for one-year terms.

12.2.1.4. Resignations from the Board shall be filled by appointments for the unexpired terms.

12.2.2. Organization and Rules.

12.2.2.1. The Board shall elect a chairman and a secretary from its members and create and fill such offices as it may determine. The term of all offices shall be one year, with eligibility for re-election.

12.2.2.2. When a member is unable to act because of conflict of interest, physical incapacity, absence, or any other reason satisfactory to the chairman, the chairman shall designate an associate member to sit in his stead.

12.2.2.3. An associate member may attend all meetings of the Board and participate in its proceedings, but may vote only when he has been designated by the chairman to sit for a member.

12.2.2.4. Any question as to whether a member shall be disqualified from voting shall be decided by a majority vote of the members except the member who is being challenged.

12.2.2.5. The Chairman shall call at least eight regular meetings of the Board each year.

12.2.2.6. Four persons shall be a quorum of the Board.

12.2.2.7. The Board shall adopt rules for the transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings, and determinations. All records shall be deemed public and may be inspected at reasonable times.

12.2.2.8. The Selectmen may appoint a replacement for any member with two or more consecutive unexcused absences from regularly scheduled meetings.

12.2.3. Duties and Powers

12.2.3.1. The Board shall perform such duties and exercise such powers as are provided by Town Ordinances and State Law.

12.2.3.2. Notification to Abutters: Owners of properties, any part of which is located within two hundred and fifty (250) feet of the nearest boundary of any property on which a development requiring Planning Board approval is proposed shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the application will be considered by the Planning Board. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board.

12.2.3.3 Technical Review Fee

In addition to the application fee, every applicant to the Planning Board may also be required by the Planning Board to pay a technical review fee to defray the Town's legal and technical costs of the application review. This fee must be paid to the Town and shall be deposited in an individual trust account, which is separate and distinct from all other Planning Board and Town accounts. When a technical review fee is required, the application will be considered

incomplete until evidence of payment of this fee is submitted to the Planning Board. If the initial fee proves to be insufficient to meet the Town's legal and technical costs of reviewing the application, the Planning Board may assess an additional fee(s) to cover such legal and technical costs.

The technical review fee may be used by the Planning Board only to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes.

12.3. Board of Appeals. A Board of Appeals is created in accordance with the provisions of State law.

12.3.1. Powers and Duties. The Board of Appeals has the following powers and duties:

12.3.1.1. Administrative Appeals: To hear and decide appeals, on an appellate basis, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of the Town's land use ordinances; and to hear and decide administrative appeals, on a *de novo* basis, where it is alleged that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer or Local Plumbing Inspector in the administration or enforcement of the Town's land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone; provided, however, that the Code Enforcement Officer's or Local Plumbing Inspector's exercise of his or her discretionary judgment whether to pursue enforcement activity under the Town's land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone is not subject to appeal.

***Citizen's Note:** Some decisions made by the Planning Board in administering the Subdivision Ordinance are not subject to appeal. See Section 14 of the Subdivision Ordinance.*

12.3.1.2 Variance Requests: To authorize variances upon request or otherwise, on a *de novo* basis, within the limitations set forth in the Town's land use ordinances.

12.3.1.3 Boundary Line Determinations: To hear and decide disputes, on a *de novo* basis, regarding the location of the boundary line for the Shoreland Zoning District.

12.3.1.4. Notification to Abutters: Owners of properties, any part of which is located within two hundred and fifty (250) feet of the nearest boundary of any property subject to an administrative appeal, variance request, or dispute about the Shoreland Zoning District boundary line shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the appeal, request, or dispute will be heard by the Board of Appeals. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Board of Appeals.

12.4. Definitions. For purposes of this Ordinance, certain terms or words used herein shall be defined as set forth in the Definitions Addendum attached hereto and made a part hereof.

SECTION 13. PERMITS, APPROVALS, AND CERTIFICATES OF COMPLIANCE REQUIRED

13.1. Permits or Approvals. After the effective date(s) of the applicable land use ordinance and amendments thereto, no person shall, without first obtaining a permit or approval, engage in any activity or use of land or structure requiring a permit or approval under the applicable Town land use ordinance governing the area in which the activity or land use would occur. Permits shall be posted on site in a manner that is readily visible within two (2) working days of issuance. Permits or approvals are required as noted in Table 1.

13.2. Certificates of Compliance. Prior to occupancy or use of any structure or land use requiring a permit or approval, the owner shall obtain a certificate of compliance from the Code Enforcement Officer. No occupancy or use of a structure, development, or land use may occur without a certificate of compliance, unless specifically allowed by the conditions of an approval or permit. The Code Enforcement Officer shall not issue a certificate of compliance until he or she has determined that the structure, development or land use has been completed in accordance with all of the Town's land use ordinances and with any conditions of permits or approvals imposed under those ordinances.

13.2.1. Temporary Certificates of Compliance. Residing in a basement or foundation before the structure has been completed shall be permitted for a period of three (3) years from the date of issuance of a building permit subject to issuance of a one-year temporary certificate of compliance, renewable annually, provided the following conditions are met:

- a. reasonable progress, as determined by the Code Enforcement Officer, is being made toward completion of the structure as permitted;
- b. nuisance conditions do not exist;
- c. a valid plumbing permit has been issued and all conditions of that permit are being met;
- d. dimensional requirements of the applicable ordinance are being met; and
- e. all other applicable requirements of the Town's ordinances are being met.

13.3. TABLE 1. LAND USES AND ACTIVITIES

<u>Land Uses and Activities</u>	<u>Interior</u>	<u>Shoreland Districts</u>				
	INT	RP	SR	SB	CF1	CF2
1. Non-intensive recreational uses not requiring structures such as hunting fishing and hiking	Yes	Yes	Yes	Yes	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	Yes	Yes	Yes	Yes	Yes	Yes
3. Forest management activities except for timber harvesting	Yes	Yes	Yes	Yes	Yes	Yes
4. *Timber harvesting	Yes	CEO	Yes	Yes	Yes	Yes
5. *Clearing of vegetation for approved construction and other allowed uses	Yes	CEO	Yes	Yes	Yes	Yes
6. Fire prevention activities	Yes	Yes	Yes	Yes	Yes	Yes
7. Wildlife management practices	Yes	Yes	Yes	Yes	Yes	Yes
8. Soil and water conservation practices	Yes	Yes	Yes	Yes	Yes	Yes
9. Mineral exploration	Yes	No	No	No	No	No
10. Mineral extraction including sand and gravel extraction	PB	No	No	No	No	No
11. Surveying and resource analysis	Yes	Yes	Yes	Yes	Yes	Yes
12. Emergency operations	Yes	Yes	Yes	Yes	Yes	Yes
13. *Agriculture	Yes	PB	Yes	Yes	No	No ¹
14. Aquaculture	PB	PB	PB	PB	PB	PB
15. Principal structures and uses						
15.1 One and two family residential	CEO	PB ¹⁰	CEO	CEO	No	CEO
15.2 Multi-unit residential	PB	No	No	No	No	No
15.3 *Commercial	PB	No	No ³	PB	PB ⁴	PB ²
15.4 *Industrial	PB	No	No	PB	No	No
15.5 *Governmental and institutional	PB	No ⁹	No	No	No	No
15.6 Small non-residential facilities for marine, scientific or nature related purposes	PB	No	PB	PB	PB	PB
16. Structures accessory to allowed uses	CEO ¹¹	PB ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹

13.3. Table 1. Land Uses and Activities (Cont.)						
<u>Land Uses and Activities</u>	<u>Interior</u>	<u>Shoreland Districts</u>				
	INT	RP	SR	SB	CF1	CF2
17. Structural repair	Yes	Yes	Yes	Yes	Yes	Yes
17.1 Structural alteration/replacement: residential	CEO	CEO	CEO	CEO	CEO	CEO
17.2 Structural alteration/replacement: non-residential	CEO/ PB	CEO/ PB	CEO/ PB	CEO/ PB	CEO/ PB	CEO/ PB
18.1 *Non-commercial piers, docks, wharves, bridges and other structures and uses extending over or below MHW line or wetland	Yes	PB	CEO	CEO	CEO	CEO
18.2 *Commercial piers, docks, wharves, bridges and other structures and uses extending over or below MHW line or wetland	Yes	PB	PB	PB	PB	PB
19. Conversions of seasonal residences to year round residences	Yes	No	LPI	LPI	No	LPI
20. *Home occupations	Yes ⁸	PB ⁸	Yes ⁸	Yes ⁸	Yes ⁸	Yes ⁸
21. Sewage disposal systems	LPI	PB ¹⁰ /LPI	LPI	LPI	LPI	LPI
22. *Essential services	Yes	PB	PB	PB	PB	PB
23. Service drop for allowed uses	Yes	Yes	Yes	Yes	Yes	Yes
24. Public and private recreational areas involving minimal development, but no building	Yes ¹²	PB	PB	CEO	CEO	CEO
25. *Individual private campsites	Yes	CEO	CEO	CEO	No	CEO
26. *Campgrounds	PB	No ⁵	PB	PB	No	PB
27. *Road and driveway construction	Yes ¹²	No ⁶	CEO	CEO	CEO ⁴	CEO
28 *Parking areas - residential	Yes	CEO	CEO	CEO	CEO	CEO
29. *Parking areas – non-residential	PB	No ⁹	PB	PB	PB ⁴	PB
30. *Marinas	PB	No	No	PB	PB ⁷	PB ⁷
31. Boat Repair Facility	PB	No	No	PB	PB	PB
32. Filling and earth moving < 50 cubic yards	Yes	CEO	Yes	Yes	Yes	Yes
33. Filling and earth moving > 50 cubic yards but less than 1000 cubic yards ¹²	Yes	PB	CEO	CEO	CEO	CEO
34. Filling and earthmoving > 1000 cubic yards ¹²	PB	PB	PB	PB	PB	PB
35. *Signs	CEO	CEO	CEO	CEO	CEO	CEO
36. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO
37. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO
38. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB
39. Projects which use more than 1000 gallons of water/day	CEO	CEO	CEO	CEO	CEO	CEO

Yes = Allowed-no permit required
 No = Not allowed
 PB = Planning Board approval required
 LPI = Plumbing permit required
 CEO = Permit required from CEO
 MHW = Maximum High Water

INT = Areas not in the Shoreland Zone
 RP = Resource Protection Zone
 SR = Shoreland Residential
 SB = Shoreland Business
 CF1 = Commercial Fisheries I
 CF2 = Commercial Fisheries II

Citizen's Note: *If you are uncertain about the activity you wish to conduct, that is not listed above, you are advised to contact the Codes Enforcement Office for further details.*

FOOTNOTES: Land Use Table

* For further information on the * uses in land use chart, see Section 15 of the Shoreland Zoning Ordinance.

1. No - except grand-fathered properties.
2. Marine related services only. Retail stores limited to 900 or less sq. ft. in size.
3. No except limited Commercial Fishing activities.
4. Functionally water-dependent and accessory to Commercial Fishing uses only.
5. Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the PB.
6. Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB.
7. Primarily commercial fishing related use.
8. Home occupations that provide public restrooms and showers or serve food to the public require a CEO permit. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance regardless of whether they are located within the Shoreland Zone.
9. Additions or expansions to existing Town Office Complex may be allowed with Planning Board approval
10. Only as provided in Section 13.1.1. of the Shoreland Zoning Ordinance.
11. When a structure is accessory to both residential and non-residential uses, the provisions of the more restrictive ordinance shall apply.
12. May require site plan review approval. Consult with the Code Enforcement Officer.

Citizen's Note: Land use activity adjacent to protected natural resources requires a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C, as may be amended from time to time. Please see Code Enforcement Officer for more information.

13.3. Permit and Approval Application

13.3.1. Every applicant for a permit or approval shall submit a written application including a scaled site plan on a form provided by the Codes Enforcement Officer to the appropriate administering body or agent. Application forms shall account for all aspects to which the Town's land use ordinances apply.

13.3.2. All applications shall be signed by the owner or owners of the property, certifying that the information in the application is complete and correct. If the person signing the application is not the owner of the property, then that person shall submit a letter of authorization from the owner.

13.3.3. All applications shall be dated and the Codes Enforcement Officer shall note upon each application the date and time of its receipt.

13.3.4. A completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of a proposed structure would require the installation of a subsurface sewage disposal system. Whenever the nature of the proposed use includes any construction, installation, or alteration of plumbing facilities, the applicant shall provide one or more of the following, as appropriate, documenting that the structure or use will be served by an adequate wastewater disposal system:

- A valid plumbing permit or completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector.
- A certificate of approval indicating the existing system was installed after July 1974 and was inspected and approved by the plumbing inspector.
- Documentation from the DEP showing that a licensed overboard discharge system exists in accordance with 38 M.R.S.A. § 413 and § 414, as may be amended from time to time.
- Written documentation, acceptable to the plumbing inspector that an adequate wastewater disposal system exists for the property.

The plumbing inspector may require that systems installed prior to 1974 be inspected and documented if the applicant cannot provide evidence that an adequate system exists. In lieu of this inspection, a replacement system may be designed for future installation.

13.4. Procedure for Administering Permits

13.4.1. With the exception of applications for subdivision and site plan review approvals, the Planning Board or Codes Enforcement Officer, as appropriate, shall examine all written applications for permits or other actions under the Town's land use ordinances and within thirty-five (35) days from the date of receipt of such written application, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.

13.4.2. With the exception of applications for subdivision and site plan review approvals, the Planning Board may or Codes Enforcement Officer shall, as appropriate, within the thirty-five (35) day time frame, visit the site for which the permit is sought.

13.4.3. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purpose and provisions of the Town's land use ordinances and any State or Federal law, regulation or rule.

13.4.4. With the exception of applications for subdivision and site plan review approvals, the Planning Board or Codes Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days of the public hearing if one is held, or within thirty-five (35) days of the next regularly scheduled meeting at which the application is considered.

Citizen's Note: See Section 13.4.7 if Planning Board approval is required for activity in the Shoreland Zone.

13.4.5. Permits shall be approved and approvals given when the proposed use or structure is found to be in conformance with the purposes and provisions of the applicable ordinance.

13.4.6. No permit or approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law, or Federal law or regulation or rule, which the Town is responsible for enforcing.

13.4.7. The Planning Board shall approve, or approve with conditions, a request for a permit in the Shoreland Zone if the Board finds that the proposed use:

13.4.7.1. Will maintain safe and healthful conditions;

13.4.7.2. Will not result in water pollution, erosion, or sedimentation to surface waters;

13.4.7.3. Will adequately provide for the disposal of all wastewater;

13.4.7.4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

13.4.7.5. Will conserve shore cover and points of access to inland and coastal waters;

13.4.7.6. Will protect archaeological and historic resources as identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service;

13.4.7.7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries I or II District;

13.4.7.8. Will avoid problems associated with flood plains development and use; and

13.4.7.9. Is in conformance with the provisions of Section 15, Land Use Standards of the Shoreland Zoning Ordinance.

If a permit or approval is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State or federal law or regulation or rule which the municipality is responsible for enforcing.

13.5. Fee and Time Limits

13.5.1. Unless otherwise provided by law, permits and approvals shall expire if substantial start of construction or other permitted or approved activity has not commenced within twelve (12) months from the date on which the permit or approval was granted. An extension of time to commence shall be granted upon application to and approval by the Codes Enforcement Officer, if reasonable need can be shown. A permit or approval is transferable unless otherwise specified.

13.5.2. Unless otherwise provided by local law, when a substantial start of construction, as defined in the Definitions Addendum, has been made in accordance with 13.5.1 and the Certificate of Compliance has not been issued by the Codes Enforcement Office within five (5) years from the date on which the permit or approval was granted, the permit or approval shall expire. An extension of time to obtain a Certificate of Compliance may be granted upon applications to and approval by Board of Appeals, if reasonable need can be shown due to exigent circumstances. Exigent circumstances would include severe family, medical, or financial problems which prevented substantial completion of construction within the required five (5) year timeframe, as determined by the Board of Appeals.

13.5.3. A non-refundable fee, in such amount as may be established by the Board of Selectmen from time to time, shall be charged for applications, permits and approvals required under the Town's land use ordinances, and a higher fee shall be charged for permit and approval

applications that are filed by the applicant after the commencement of the activity for which the permit or approval is required.

13.5.4. When a permit or approval has expired, a new permit or approval must be obtained in order for construction to continue. Further construction must meet the requirements of the Town's land use ordinances in effect at the time the new permit or approval is sought.

13.5.5. The provisions of Sections 13.5.2 and 13.5.4. of this Ordinance apply only to permits and approvals issued on or after April 1, 1998

13.5.6 Failure of the Planning Board to act upon a request for action or upon an application for a permit or approval, or of the Codes Enforcement Officer to act upon a request for action or upon an application for a building permit, within thirty-five (35) days of the date of receipt of a complete application shall constitute denial of that request or application, unless the applicable ordinance provides otherwise.

13.6. Violation, Enforcement, Penalties, and Legal Actions

13.6.1. Any violation of the Town's land use ordinances shall be deemed to be a nuisance.

13.6.2. If the Codes Enforcement Officer finds that provisions of the Town's land use ordinances are being violated, he or she shall notify personally or in writing, if necessary by certified mail return receipt requested, the person responsible for such violation indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order the discontinuance of illegal use of land, structures, or work being done, removal of illegal structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or nuisance conditions; or shall take any other action authorized by this Article to ensure compliance with or to prevent violation of the provisions of the Town's land use ordinances. A copy of such notice shall be submitted to the Board of Selectmen and shall be maintained as a permanent record.

13.6.3. Any person, including but not limited to a landowner, a landowner's agent, or contractor who orders or conducts any activity in violation of the Town's land use ordinances shall be penalized in accordance with 30-A, M.R.S.A. § 4452, as may be amended from time to time.

Citizen's Note: *Current penalties include fines of not less than \$100 nor more than \$2500. Fines may be assessed for each day the violation occurs.*

13.6.3.1. In addition to penalties provided herein, the Town may bring an action in the Superior Court or District Court to enjoin violators of the Town's land use ordinances, for collection of penalties, and for such other relief as may be provided by law.

13.6.3.2. Each day in which a violation is proved to exist shall constitute a separate offense under this Section.

13.6.3.3. In addition to the penalties provided above, any violation of Section 15.15.2. of the Shoreland Zoning Ordinance regarding clearing of vegetation within the 75 foot shoreland setback must be remedied by replanting such that the standards of Section 15.15.2.2. of the Shoreland Zoning Ordinance for a well distributed stand of trees and other vegetation are met, unless the Selectmen find that the violation is minor, in which case they may determine such lesser penalty as law allows.

13.6.4. When notification and penalties for actions in violation of the Town's land use ordinances do not result in the correction or abatement of the violation or nuisance condition, the Codes Enforcement Officer shall advise the Board of Selectmen, who may institute any and all actions and proceedings either legal or equitable, to correct the violation, including seeking injunctions of violations, that may be appropriate or necessary for the enforcement of the provisions of the Town's land use ordinances in the name of the Town. The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of the Town's land use ordinances and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

SECTION 14. VARIANCES AND APPEALS

14.1. Variances.

Variances may be permitted only under the following conditions:

14.1.1 Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, and setback requirements.

14.1.2. Variances shall not be granted for establishment of any uses otherwise prohibited by the applicable ordinance.

14.1.3. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals or its designee to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals

14.1.4 The Board shall not grant a variance unless it finds that:

14.1.4.1 The proposed structure or use would meet the requirements of the applicable Town land use ordinance except for the specific provision(s) which has created the non-conformity and from which relief is sought; and

14.1.4.2 Except as provided in subsections 14.1.4.3 and 14.1.4.4, and 14.1.4.5, the Board may grant a variance only if strict application of the ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

14.1.4.3 Disability Variance: The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S.A., § 4553, as may be amended from time to time, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

14.1.4.4. Set-back Variance for Single-Family Dwellings: The Board may grant a setback variance for a single family dwelling. The Board may consider a variance from a setback requirement only when strict application of the zoning ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" in the subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of an abutting property; and:
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance granted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single family dwelling that is the primary year-round residence of the applicant. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board may allow for a variance under this subsection to exceed 20% of the set-back requirement, except for minimum setbacks from a water body, or the upland edge of a wetland, or a tributary stream within the Shoreland Zone, if the applicant has obtained the written consent of an affected abutting land owner.

14.1.4.5. Practical Difficulty Variance. The Board may grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the applicant and the applicant's property would cause a practical difficulty and when the following conditions exist:

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably or adversely affect the natural environment; and
6. The property is not located in whole or in part within the Shoreland Zone.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage, and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district or area in which the property is located and results in significant economic injury to the applicant.

14.1.5. Variance Recorded. If the Board of Appeals grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local Registry of Deeds within ninety (90) days of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

14.1.6. Interpretation of Ordinance Requirements. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so, may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

14.1.7. A copy of all variances granted by the Board of Appeals in the Shoreland Zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

14.2. Appeals.

14.2.1. Administrative Appeal. An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board unless otherwise noted in the appropriate land use ordinance or any decision of the Local Plumbing Inspector in the administration of the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone. Such appeal shall be taken within forty (40) days of the date of the decision appealed from, and not otherwise, except that the Board, upon showing of good cause, may waive the forty (40) day requirement.

14.2.2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

1. A concise written statement indicating the decision of the Planning Board, Codes Enforcement Officer or Local Plumbing Inspector being appealed from, the specific provisions of the applicable ordinance, to which the decision is alleged to be in error, and what relief is requested.
2. A sketch drawn to scale showing lot lines, location of existing structures and other physical features of the lot pertinent to the relief sought.

14.2.3. Upon being notified of an administrative appeal, the Code Enforcement Officer, Local Plumbing Inspector or Planning Board, as appropriate, shall transmit to the Board of Appeals all the papers constituting the record of the decision appealed from.

14.2.4. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

14.3. Decision by Board of Appeals

14.3.1. A majority of the Board shall constitute a quorum for the purpose of deciding an appeal, request, or dispute. A member who abstains shall not be counted in determining whether a quorum exists.

14.3.2. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Codes Enforcement Officer, Local Plumbing Inspector or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide, or to grant any variance, or to settle a dispute about the Shoreland Zoning District boundary. When acting in an appellate capacity, the Board of Appeals may reverse the decision of the Planning Board only when there is an error in the Planning Board's interpretation or application of specific provisions of the ordinance. When acting in a *de novo* capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence.

14.3.3. The person filing the variance application, administrative appeal or dispute about the Shoreland Zoning District boundary line shall have the burden of proof.

14.3.4. The Board shall decide all appeals, requests, or disputes within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

14.3.5. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis thereof, and the appropriate order, relief or denial thereof.

14.4. Appeal to Superior Court

Any aggrieved party who participated in the proceedings before the Board of Appeals may take an appeal to Superior Court as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time.

14.5. Reconsideration

The Board of Appeals may reconsider any decision as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time. The Board may conduct additional hearings and receive additional evidence and testimony.